

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

**Alternative Insurance Services, Inc.
System ID No. 0010772**

Enforcement Case No. 08-6926

John Flaherty

Respondents
_____ /

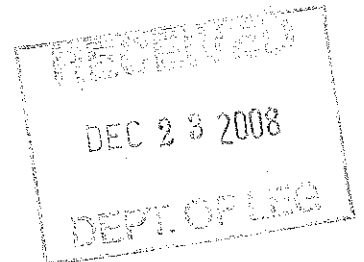
Issued and entered
on 12/30/08 2008
by **Stephen R. Hilker**
Chief Deputy Commissioner

CONSENT ORDER AND STIPULATION

A. FINDINGS OF FACT AND CONCLUSIONS OF LAW

It is alleged that the following statements are true and correct:

1. At all pertinent times, Respondent Alternative Insurance Services, Inc. (hereafter referred to as "AIS") was an insurance agency licensed as an insurance producer within the State of Michigan with qualifications in property, casualty, and surplus lines.
2. At all pertinent times, Respondent John Flaherty (hereafter referred to as "Flaherty") was not licensed to sell, solicit, or negotiate insurance in the State of Michigan.
3. At all pertinent times, Respondent Flaherty owned and operated AIS. Respondent AIS and Flaherty are hereafter referred to as "Respondents."
4. Respondent Flaherty knew or had reason to know that Section 1201a(1) of the Michigan Insurance Code (hereafter referred to as "Code"), MCL 500.1201a(1), provides that a person shall not sell, solicit, or negotiate insurance in this state for any line of insurance unless the person is licensed for that qualification in accordance with Chapter 12 of the Code.
5. Respondents knew or had reason to know that Section 1207(1) of the Code, MCL 500.1207(1), provides that an agent shall be a fiduciary for all moneys received or held



- by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility.
6. Respondents further knew or had reason to know that Section 1207(2) of the Code requires that "An agent shall use reasonable accounting methods to record funds received in his or her fiduciary capacity including the receipt and distribution of all premiums due each of his or her insurers."
 7. Respondents further knew or had reason to know that Section 1239(1)(d) of the Code, MCL 1239(1)(d), provides that the commissioner may place on probation, suspend, and revoke an insurance producer's license for improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.
 8. Respondents further knew or had reason to know that Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), provides that the commissioner may place on probation, suspend, and revoke an insurance producer's license for using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
 9. On or about November 5, 2007, the Office of Financial and Insurance Regulation (hereafter referred to as "OFIR") received a written complaint from Anne Dwyer of American International Group (hereafter referred to as "AIG") Audit Investigative Group alleging Respondent Flaherty and AIS failed to remit over \$459,500.00 in premium on eight commercial insurance policies written through AIG.
 10. AIG alleged in its complaint that the following eight policyholders paid Respondent Flaherty and AIS insurance premium, but Respondent Flaherty and AIS failed to remit the money to AIG.
 - a. City of Inkster – amount due: \$263,109.85
 - b. County of Macomb – amount due: \$137,520.25
 - c. Midwest Hospitality, LLC – amount due: \$865.29
 - d. Michigan State AFL-CIO – amount due: \$3,327.00
 - e. Michigan State Building and Construction – amount due: \$360.00
 - f. Jonathan Witz and Associates – amount due \$31,875.00
 - g. Mack Avenue – amount due: \$21,250.00
 - h. City of Flint – amount due: \$1,219.75

Total due: \$459,527.14
 11. On November 13, 2007, OFIR Staff met with Respondent Flaherty and his attorney Michael Dorfman. At this meeting Mr. Flaherty stated in the presence of his attorney:
 - a. He was paid by the insureds on the above referenced AIG accounts.
 - b. He did not forward the premium money to AIG and still owed \$459,527.14 to AIG on the above referenced accounts.
 - c. He was not licensed as an insurance producer in the State of Michigan.
 - d. He placed business with insurance companies.

- e. He is responsible for signing all checks (payroll, overhead, and premium to insurers.)
 - f. He has written with other carriers since falling behind with AIG
12. Respondent AIS still owes AIG approximately \$459,527.14 in insurance premium.
 13. On July 22, 2008, Respondent Flaherty and AIS received a \$83,885.00 check from writing agents, Nickel & Saph, Inc., as premium payments for the renewal of insurance policies for the City of Fraser and Sanilac County.
 14. On or about July 23, 2008, Respondent Flaherty and AIS negotiated the check at Comerica Bank and the money was placed into an account held by Respondent Flaherty and AIS.
 15. The \$83,885.00 surplus lines premium should have been remitted by Respondent Flaherty and AIS to W. H. Greene, a surplus lines broker in the State of New York, and then forwarded to the companies underwriting the municipalities, Merchant's Mutual Insurance (Sanilac) and American Alternative Insurance Corp. (Frasier).
 16. Respondent Flaherty and AIS failed to remit the premium money to W.H. Greene.
 17. On September 2, 2008, Respondent Flaherty sent an email to Nickel & Saph, Inc., the writing agent for Frasier and Sanilac accounts, stating Respondents never sent the premium money to W.H. Greene and that the City of Fraser and Sanilac County had been issued notices of cancellation.
 18. On September 8, 2008, OFIR received an email from Terry Greene of W.H. Greene. Mr. Green alleged three municipalities, including Frasier and Sanilac, that had paid premium to Respondent Flaherty and AIS, which premium were not remitted to Greene.
 - a. Mecos: amount due \$32,584.98
 - b. Sanilac County: amount due \$20,647.00
 - c. City of Frasier: amount due \$42,346.00

Total due: \$95,577.98
 19. Respondent AIS, directly and indirectly through Respondent Flaherty, received money in its fiduciary capacity as an agent, but failed to remit the money to whom it was owed in a timely manner, which is a violation of Section 1207(1) of the Code.
 20. Respondent AIS, directly and indirectly through Respondent Flaherty, received money in its fiduciary capacity as an agent, but failed use reasonable accounting methods to record funds received in its fiduciary capacity including the receipt and distribution of all premiums due each insurer, which is a violation of Section 1207(2) of the Code.
 21. Respondents improperly withheld, misappropriated, or converted money received in the course of doing insurance business in the State of Michigan, which is a violation of Section 1239(1)(d) of the Code.

22. Respondents used fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in the State of Michigan, which is a violation of Section 1239(1)(h) of the Code.
23. Based upon the above actions, Respondents have committed acts that are grounds for the Commissioner ordering payment of a civil fine, refund of any overcharges, restitution be made to insureds to cover losses, damages or other harm attributed to Respondents' violation of the Code, and/or licensing sanctions under Section 1244(1) of the Code for the Respondents violating Section 1207(1), 1207(2), 1239(1)(d), and 1239(1)(h) of the Code.

B. ORDER

Based on the findings of fact and conclusions of law above and Respondent's stipulation, it is ORDERED that:

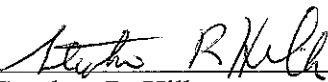
1. Respondents shall immediately cease and desist from operating in such a manner as to violate with Section 1207(1), 1207(2), and 1239(1)(d) and (h) of the Code, MCL 500.1207(1), 500.1207(2), 500.1239(1)(d), and 500.1239(1)(h).
2. Respondents shall pay restitution in the amount of \$1,329,086.55 dollars to the following:

a. Berkley Specialty	\$133,318.15
b. WH Greene & Associates	\$79,183.48
c. Chubb Group	\$547,267.49
d. AIG	\$403,957.10
e. AXA ART	\$3,706.00
f. Seneca	\$1,650.00
g. Market Access	\$7,614.45
h. ACE USA	\$2,125.00
i. JH Ferguson	\$4,023.75
j. COVERX	\$6,252.00
k. McGowan	\$7,600.00
l. Metro Insurance	\$16,596.05
m. Markel	\$13,099.23
n. Philadelphia Ins. Co.	\$3,244.65
o. American Empire	\$83,320.00
p. Media Professional	\$2,485.40
q. First Insurance Funding	\$11,518.80
r. Cairnstone/American Alternative	\$2,125.00
3. If OFIR determines any addition premium was not remitted to these insurers or entities, or any other insurer or entity, Respondent, after notification by OFIR, shall pay restitution to the insurer or entity.
4. Respondents shall provide OFIR with a written repayment schedule for each insurer or entity within 90 days of the effective date of this Order. The length of the repayment

schedules shall be determined by Respondents and the insurer or entity, but shall not be for more than five years from the date of this Order.

5. Respondents shall submit quarterly reports to the Office of Financial and Insurance Regulation, Market Conduct Section, Investigations Unit ("OFIR-MCSIU"). The OFIR-MCSIU must receive the quarterly report no later than the 15th day of the month for which the report is due. Respondent John Flaherty is individually and solely responsible for ensuring that the quarterly report is timely filed and received by OFIR-MCSIU. Respondent John Flaherty shall incur a \$100.00 per day civil fine for each day a quarterly report is received after the 15th day of the month for which the report is due.
6. Respondent John Flaherty shall file and the OFIR-MCSIU must receive the first quarterly report by April 15, 2009. Subsequent quarterly reports shall be due no later than July 15, October 15, and January 15 of each year until all restitution payments have been completed.
7. Respondent John Flaherty shall continue to file quarterly reports with OFIR-MCSIU until OFIR-MCSIU provides Respondent John Flaherty with a written statement that the quarterly reports are no longer required.
8. Respondent AIS's insurance producer license and authority are hereby **REVOKED**.

OFFICE OF FINANCIAL AND
INSURANCE REGULATION

By: 
Stephen R. Hilker
Chief Deputy Commissioner